

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-0046V

MELISSA FERGUSON,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 23, 2024

Maximillian J. Muller, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Alexa Roggenkamp, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 4, 2021, Melissa Ferguson filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) resulting from a tetanus diphtheria acellular pertussis (“Tdap”) vaccine received on December 20, 2019. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 18, 2024, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA.³ On April 22, 2024, Respondent filed a proffer on award of

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

³ Respondent states that he has no objection to the amount of proffered damages in the April 22, 2024 proffer and this decision, but reserves his right to seek review of my March 18, 2024 entitlement decision.

compensation (“Proffer”) indicating Petitioner should be awarded \$63,000.00. Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$63,000.00 in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties’ joint filing of notice renouncing the right to seek review.

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Chief Special Master Corcoran

ECF

PROFFER ON AWARD OF COMPENSATION

On February 17, 2023, petitioner filed a Motion for a Ruling on the Record, requesting that the Chief Special Master find that she developed shoulder pain within forty-eight hours of receiving the the Tetanus, Diphtheria, and Acellular Pertussis (“Tdap”) vaccine administered on December 20, 2019, and experienced more than six months’ sequela, and therefore she is entitled to compensation for a shoulder injury related to vaccine administration (“SIRVA”) under the Vaccine Act, 42 U.S.C. § 300aa-1 *et seq.*, for an injury listed in the Vaccine Injury Table, 42 C.F.R. § 100.3(a), (c)(10). ECF No. 32 (“Motion”). Respondent filed his Response to Petitioner’s Motion on April 17, 2023, recommending that entitlement to compensation be denied, and petitioner filed a Reply on April 24, 2023. ECF Nos. 33, 34. On March 18, 2024, the Court issued a Ruling on Entitlement, finding that petitioner is entitled to compensation.¹ ECF No. 35.

¹ Respondent has no objection to the amount of the proffered award of damages set forth herein. Assuming the Chief Special Master issues a damages decision in conformity with this proffer, respondent waives his right to seek review of such damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Chief Special Master’s March 18, 2024, entitlement decision.

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$63,000.00, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).² Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$63,000.00, in the form of a check payable to petitioner. Petitioner agrees.

Respectfully submitted,

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² Should petitioner die prior to the entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

/s/ Alexa Roggenkamp

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Dated: April 22, 2024